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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,581	02/12/2001	John P. Rebhorn	5487USA	9718

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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

6

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

7A

Office Action Summary	Application No.	Applicant(s)
	09/781,581	REBHORN ET AL.
	Examiner Robert Madsen	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
 - 4a) Of the above claim(s) 34-38 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-33 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

<ol style="list-style-type: none"> 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> 	<ol style="list-style-type: none"> 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-33, drawn to a container and the method of making a container holding two separate edible components, classified in class 426, subclass 120.
- II. Claim 34-38, drawn to a method of using a container holding two separate components, classified in class 222, subclass 129.

The inventions are distinct, each from the other because:

Inventions I and II are distinct inventions since the method of using the container of invention I can be used in a materially different process, such as separating the containers and pouring the contents of one container into the other container before consuming.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Michael Maier on April 9, 2002 a provisional election was made without traverse to prosecute the invention of group I, claims 1-33. Affirmation of this election must be made by applicant in replying to this Office action. Claim 34-38 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4-7,13, 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Siegel et al. (US 5209909).

Siegel et al. teach:

a first outer resilient compartment (i.e. item 60 of Figures 5-7 is made of flexible material that can be squeezed as recited in claim 13) that is completely sealed as recited in claims 6 and 22 (See Figure 6, Column 5, lines 49-62) and has a rim and a bottom;

a second inner compartment with a lip, which is parallel to the bottom of the first compartment (See Figure 7) as recited in claims 7 and 24, that rests on and is sealed to the rim (item 70) as recited in claims 4 , 5, and 24, and may include ultrasonically welding as recited in claim 21 (Column 4, line 59 to Column 5, line 6).

a pour opening formed through the lip (items 82/84), which is formed by a recess in the second compartment as recited in claim 14;

a cover secured to the lip (item 102) that encompasses the pour opening, as recited in claim 23;

and a passage way (item 86) is formed between the two compartments that connects the first compartment with the pour opening as recited in claims 1, 20, 22, and 24 (figures 5-7, Column 4, lines 50-64, Column 2, 33-68).

Claims 1-3, 5-7, 12-20,22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickerson (US 5706980).

Regarding claims 1-3,5-7,12-20,22-24 Dickerson teaches:

a first outer milk-containing compartment (item 20 of the Figures) , as recited in claims 2,3, 18,19, and 20,which may be completely sealed as recited in claim 6, may be made of flexible material to control flow as recited in claim 13 (Column 10, lines 34-40) and 22(Column 5, line 34- Column 6, line 15) has a rim (item 37 of the Figures)and a bottom;

a second inner cereal-containing compartment (item 22), as recited in claims 2, 3,15-17, with a lip (item 32) that is affixed to the rim (item 35), as recited in claim 5,20, and 24 via a seal surface(item 29) and a cover (item 24) that is sealed to the lip that encompasses the opening, as recited in claim 23 (Figure 3, Column 5, line 63 to Column 6, lines 13, Column 8, lines 55-67);

a lip, in some embodiments, is substantially parallel to the lower plane defined by the bottom since Dickerson teaches the entire first compartment may be cylindrical when the first compartment is insulated, instead of just the liquid containing portion as shown in Figure 3 (Column 5, lines 34-45, Column 8, lines 55-59) as recited in claims 7 and 24.

a pour hole, as recited in claim 15, formed through the lip, which is formed a recess in the second compartment as recited in claim 14 (See Figure 6A); a spout formed in the first compartment as recited in claim 12(See Figure 6B around items 28 and 32), a cover secured to the lip (item 24 in Figure 5); and a passage way (item 86) is formed between the two compartments that connects the first compartment with the pour opening as recited in claims 1,15, 20, 22 , and 24(Figures, Column 3, lines 10-60).

Claims 25,28-31,33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dickerson (US 5706980).

Regarding claims 25,28-31, see Column 10, lines 3-15, Figures 2 and 3 in light of the Abstract.

Regarding claim 33, see column 10, lines 11-15, Column 9, lines 1-25.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) as applied to claim 1 above.

Regarding claim 8, although Dickerson is silent in teaching the diameter of the first compartments, Dickerson teaches the container is meant to be hand-held (Column 4, lines 51-64). To select any particular diameter for the bottom of the first compartment would have been an obvious result effective variable of the hand size of the intended user so that the container is sufficiently small to be hand held.

Regarding claim 9, although Dickerson is silent in teaching any particular radius for the annular lip, to select any particular thickness of the lip would have been an obvious design choice since this would effect the structural integrity of the lip (i.e. if too small of a radius were selected the material would be too flimsy).

Regarding claim 10, although Dickerson is silent in teaching any particular radius size for the pour opening, Dickerson does teaches the liquid channel is sized to assist in providing control of the appropriate ratio of liquid to dry product to be consumed (Column 4, line 65-Column 5, line 10). Therefore, to select any particular radius for the pour opening would have been an obvious result effective variable of the desired liquid to dry product ratio during consumption.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) as applied to claim 1 above, further in view of Ours et al. (US 6264068 B1).

Dickerson is silent in teaching a radial extension on the lip at the pour opening. Ours et al. , like Dickerson, also teaches a handheld solid/liquid container that dispenses the liquid contained in a lower compartment (Dickerson's first compartment)

along with the solid contained in an upper compartment (Dickerson's second compartment) . Ours et al. are relied on as further evidence of providing a radial lip extension from the solid compartment (i.e. the compartment situated above item 60 of Figures 6A and 6B) in order to reduce spilling of the liquid and promote pouring of the solid material(Abstract, Column 2, lines 48-63). Therefore, it would have been obvious to modify the lip of Dickerson and provide a radial extension since this would facilitate pouring of the cereal and reduce spilling of the milk. One would have been substituting one conventional lip design for another for the same type of dispensing container.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) as applied to claim 25 above, further in view of Newarski (US 5496575).

As discussed above in the rejection of claim 25, Dickerson teaches providing first compartment and a second compartment with a pour opening, dispensing a liquid (e.g. milk) into the first, a solid (e.g. cereal) into the second, placing the second into the first compartment such that the lip abuts the rim, sealing the lip to the rim, and providing a passage between the two compartments to allow for the liquid through the pour opening. Dickerson also teaches covering the second compartment and placing the second compartment into the first (Column 10 lines 3-15). Dickerson further teaches the second compartment may be lidded prior to assembly when both compartments are in a pre-packaged form for consumers (Column 7, lines 17-40). Dickerson is silent in teaching any sanitizing steps wherein after the second compartment is covered the

outside of the compartment is sanitized, the first compartment is sanitized before it's filled with product so that when the covered second compartment is placed into a sanitized first compartment.

However, these sanitizing steps are well known steps in pre-packaging cereal and milk together in separate compartments. Newarski, for example, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line 30, Column 3, lines 1-50). Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Dickerson that would be the interior of the first compartment and the exterior of the second compartment.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) as applied to claim 25 above, further in view of Newarski (US 5496575) and Siegel et al. (US 5209909).

As discussed above in the rejection of claim 25, Dickerson teaches providing first compartment and a second compartment with a pour opening, dispensing a liquid (e.g. milk) into the first, a solid (e.g. cereal) into the second, placing the second into the first compartment such that the lip abuts the rim, sealing the lip to the rim, and providing

a passage between the two compartments to allow for the liquid through the pour opening. Dickerson also teaches covering the second compartment and placing the second compartment into the first (Column 10 lines 3-15). Dickerson further teaches the second compartment may be lidded prior to assembly when both compartments are in a pre-packaged form for consumers (Column 7, lines 17-40). Dickerson is silent in teaching any sanitizing steps wherein after both compartments are both sanitized, the first compartment filled, the pour opening is sealed before the second compartment is placed into the first compartment, and the second compartment is filled after it has been placed into the first compartment.

Newarski, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-50).

Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Dickerson that would be the interior of the first compartment and the exterior of the second compartment.

With respect to sealing the pour opening before filling the second compartment, Siegel et al who also teach a container similar to Dickerson (as discussed above in the rejection of claims 1,4-7,13, 20-24 under 35 U.S.C. 102 (b)) wherein both compartments

may be sealed with the same cover, but are relied as evidence of the conventionality of alternatively sealing the pour opening of the second compartment in order to maintain a hermetic seal around a more environmentally sensitive first product in the first compartment (Column 5, lines 34-68). Therefore, it would have been obvious to further seal the pour opening before inserting the second compartment into the first since it was well known that this will preserve the a more sensitive first product, when filling the second. One would have been substituting one assembly step for another for the same purpose: filling a two compartment container wherein a first component in the outer first compartment is more environmentally sensitive than the second.

Claims 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) as applied to claim 25 above, further in view of Siegel et al. (US 5209909).

As discussed above in the rejection of claims 25,28-31 Dickerson teaches sealing the lip to the rim to secure the compartments(Column 3, lines 45-60), but is silent in teaching ultrasonic welding. Siegel et al. also teach providing first compartment , a second compartment having pour opening, and securing the second inside the first compartment by sealing the lip of the second compartment to the rim of the first compartment. However, Siegel et al. are relied on as evidence of using ultrasonic welding as a suitable means to seal the rim to the lip (column 4, line 64 to Column 5, line 6). Therefore, it would have been obvious to modify the method of Dickerson and include sonic welding since one would have been substituting one method of sealing for

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another for the same purpose: sealing an inner compartment within an outer compartment such that the products stored within each are stored separately, but may be dispensed simultaneously.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5-10, 12-20, 22-24, are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/781,583 in view of Dickerson (US 5706980).

Regarding claims 1-3, 5-7, 12-20, 22-24, application '583 recites a container with a first compartment connected to a second compartment each with pour openings to facilitate restricted flow, a liquid consumable product in one compartment, a dry consumable product in the other compartment, wherein the products are contained

separately and wherein the dry consumable product is cereal (See claims 1-24).

However, '583 does not recite the particular dimensions/shape of the container and individual compartments, and '583 does not recite milk as the liquid product.

Dickerson also teaches a container comprising two connected compartments one with cereal and one with a liquid, including milk, and further teaches the particular dimensions/shapes:

a first outer milk-containing compartment (item 20 of the Figures) , as recited in claims 2,3, 18,19, and 20,which may be completely sealed as recited in claim 6, may be made of flexible material to control flow as recited in claim 13 (Column 10, lines 34-40) and 22(Column 5, line 34- Column 6, line 15) has a rim (item 37 of the Figures)and a bottom;

a second inner cereal-containing compartment (item 22), as recited in claims 2, 3,15-17, with a lip (item 32) that is affixed to the rim (item 35), as recited in claim 5,20, and 24 via a seal surface(item 29) and a cover (item 24) that is sealed to the lip that encompasses the opening, as recited in claim 23 (Figure 3, Column 5, line 63 to Column 6, lines 13, Column 8, lines 55-67);

a lip, in some embodiments, is substantially parallel to the lower plane defined by the bottom since Dickerson teaches the entire first compartment may be cylindrical when the first compartment is insulated, instead of just the liquid containing portion as shown in Figure 3 (Column 5, lines 34-45, Column 8, lines 55-59) as recited in claims 7 and 24.

a pour hole, as recited in claim 15, formed through the lip, which is formed a recess in the second compartment as recited in claim 14 (See Figure 6A);

a spout formed in the first compartment as recited in claim 12(See Figure 6B around items 28 and 32), a cover secured to the lip (item 24 in Figure 5);

and a passage way (item 86) is formed between the two compartments that connects the first compartment with the pour opening as recited in claims 1,15, 20, 22 , and 24(Figures, Column 3, lines 10-60).

Therefore, it would have been obvious to modify the claims of application '583 to include the particular structure and liquid product (i.e. milk) taught by Dickerson since one would have been substituting one known container structure for another for the same purpose: containing a liquid product and cereal product in separate but connected compartments wherein each compartment allows for the restricted flow of the liquid or cereal product. Furthermore, it would have been further obvious to include milk since one would have been substituting one known liquid for another that is packaged with cereal in a two compartment dispensing container.

Regarding claim 8, although '583 does not recite the diameter of the first compartments, Dickerson teaches the container is meant to be hand-held (Column 4, lines 51-64). Therefore, to select any particular diameter for the bottom of the first compartment would have been an obvious result effective variable of the hand size of the intended user so that the container is sufficiently small to be hand held.

Regarding claim 9, although '583 does not recite any particular radius for the annular lip, to select any particular thickness of the lip would have been an obvious

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design choice since this would effect the structural integrity of the lip (i.e. if too small of a radius were selected the material would be too flimsy).

Regarding claim 10, although '583 does not recite any particular radius size for the pour opening, Dickerson does teaches the liquid channel is sized to assist in providing control of the appropriate ratio of liquid to dry product to be consumed (Column 4, line 65-Column 5, line 10). Therefore, to select any particular radius for the pour opening would have been an obvious result effective variable of the desired liquid to dry product ratio during consumption.

Claim 11 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/781,583 in view of Dickerson (US 5706980) as applied to claim 1 above, further in view of Ours et al. (US 6264068 B1).

'583 does not recite a radial extension on the lip at the pour opening. Ours et al. also teaches a handheld solid/liquid container that dispenses the liquid contained in a lower compartment (Dickerson's first compartment) along with the solid contained in an upper compartment(Dickerson's second compartment) . Ours et al. are relied on as further evidence of providing a radial lip extension from the solid compartment (i.e. the compartment situated above item 60 of Figures 6A and 6B) in order to reduce spilling of the liquid and promote pouring of the solid material(Abstract, Column 2, lines 48-63). Therefore, it would have been obvious to modify the lip and provide a radial extension since this would facilitate pouring of the cereal and reduce spilling of the milk. One

would have been substituting one conventional lip design for another for the same type of dispensing container.

Claims 14 and 21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/781,583 in view of Dickerson (US 5706980) as applied to claims 1 and 20 above, further in view of Siegel et al. (US 5209909).

'583 does not recite the lip rests on the rim as recited in claim 4, or that the lip is ultrasonically welded as recited in claim 21. Siegel et al. teach is relied on as evidence of the conventionality of a container comprising first outer completely sealed compartment (i.e. item 60 of Figures 5-7, See Figure 6, Column 5, lines 49-62) with rim and a second inner compartment with a lip that rests on and is sealed to the rim (item 70) as recited in claims 4 by ultrasonically welding as recited in claim 21 (Column 4, line 59 to Column 5, line 6) wherein the container is used for dispensing (figures 5-7, Column 4, lines 50-64, Column 2, 33-68). Therefore, it would have been obvious to rest the lip of the second compartment on the rim of the first compartment and further weld the rim to the lid since one would have been substituting one conventional connection for another for a two compartment dispenser.

Claims 25,28-31,33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-45 of copending Application No. 09/781,583 in view of Dickerson (US 5706980).

Regarding claims 25,28-31, Application '583 recites a method of providing a container with a first compartment connected to a second compartment each with pour openings to facilitate restricted flow, dispensing milk in one compartment and dispensing cereal in the other compartment, wherein the milk and cereal are maintained separately (See claims 32-45). However, '583 does not recite a second compartment with a pour opening, placing the second into the first compartment such that a lip of the second compartment abuts a rim of the first, sealing the lip to the rim, and providing a passage between the two compartments to allow for the milk through the pour opening.

Dickerson is relied on as evidence of the conventionality of providing a first milk compartment and a second cereal compartment that are connected by placing the second into the first compartment such that the lip of the second compartment abuts the rim of the first, sealing the lip to the rim, and providing a passage between the two compartments to allow for the milk through the pour opening (see Column 10, lines 3-15, Figures 2 and 3 in light of the Abstract). Therefore, it would have been obvious to connect the second compartment to the first as taught by Dickerson and provide a passage between the two through the pour opening since one would have been substituting one known milk and cereal dispenser design for another for the same purpose: store the milk and cereal separately but connectively in a dispensing container.

Regarding claim 33, '583 does not recite providing a cover or sealing the cover to the lip such that partial removal of the cover from the second compartment a part of the

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second compartment and pour opening are exposed. However, Dickerson is relied on as further evidence of including a manufacturing step of providing such a cover to provide for simultaneous dispensing (See column 10, lines 11-15, Column 9, lines 1-25) Therefore, it would have been obvious to modify the method recited in '583 since one would have been one manufacturing step for another for the same purpose providing a cereal and milk dispenser.

Claim 26 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-45 of copending Application No. 09/781,583 in view of Dickerson (US 5706980), as applied to claim 25 above, further in view of Newarski (US 5496575).

'583 does not recite any sanitizing steps wherein after the second compartment is covered the outside of the compartment is sanitized, the first compartment is sanitized before it's filled with product so that when the covered second compartment is placed into a sanitized first compartment.

However, these sanitizing steps are well known steps in pre-packaging cereal and milk together in separate compartments. Newarski, for example, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line 30, Column 3, lines 1-50). Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment

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since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a package that will be in contact with milk, which would include the interior of the first compartment and the exterior of the second compartment.

Claim 27 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-45 of copending Application No. 09/781,583 in view of Dickerson (US 5706980), as applied to claim 25 above, further in view of Newarski (US 5496575) and Siegel et al. (US 5209909).

'583 does not recite any sanitizing steps wherein after both compartments are both sanitized, the first compartment filled, the pour opening is sealed before the second compartment is placed into the first compartment, and the second compartment is filled after it has been placed into the first compartment.

Newarski, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line 30, Column 3, lines 1-50).

Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a

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package that will be in contact with milk (i.e. the interior of the first compartment and the exterior of the second compartment).

With respect to sealing the pour opening before filling the second compartment, Siegel et al who also teach a container with two connected compartments with separately contained products wherein both compartments may be sealed with the same cover, are relied as evidence of the conventionality of alternatively sealing the pour opening of the second compartment in order to maintain a hermetic seal around a more environmentally sensitive first product in the first compartment (Column 5, lines 34-68). Therefore, it would have been obvious to further seal the pour opening before inserting the second compartment into the first since it was well known that this will preserve the a more sensitive first product, when filling the second. One would have been substituting one assembly step for another for the same purpose: filling a two compartment container wherein a first component in the outer first compartment is more environmentally sensitive than the second.

This is a provisional obvious- type double patenting.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lin (US 4582197), Silver (US 4159066), Andrzejczak (US 5987913) teach consumable product dispenser comprising one compartment within another compartment.

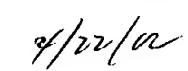
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen 
Examiner
Art Unit 1761
April 21, 2002


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700


4/22/02